

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 21-126**

v. * **SECTION: S**

EMPIRE BULKERS LTD. *
JOANNA MARITIME LIMITED

* * *

JOINT FACTUAL BASIS

The United States of America, by and through the United States Attorney for the Eastern District of Louisiana and the Environmental Crimes Section of the United States Department of Justice (collectively referred to herein as “the United States” or “the Government”), and Defendants Empire Bulkers LTD. (“Empire Bulkers”), and Joanna Maritime Limited (“Joanna Maritime”) (collectively “Defendants”), hereby agree that this Joint Factual Statement is a true and accurate statement of the Defendants’ criminal conduct and that it provides a sufficient basis for the Defendants’ plea of guilty to Counts One and Four of the pending Indictment in the above-captioned matter.

I. The Defendants

Defendants Empire Bulkers and Joanna Maritime were respectively the ship operator and the owner. Empire Bulkers and Joanna Maritime are related entities. Joanna Maritime did business by and through Empire Bulkers which served as the technical and commercial ship

AUSA
Empire Bulkers
Joanna Maritime
Defense Counsel

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manager of the *M/V Joanna*. Joanna Maritime had no employees or operating offices of its own. The crew of the *M/V Joanna* included a Master, Chief Engineer, Second Engineer, Third Engineer, Electrician, Oiler, and Wiper who acted for the benefit of both corporate defendants.

II. M/V Joanna

The *M/V Joanna* was a 180-meter, 23,494 gross ton ocean-going bulk cargo vessel. The *M/V Joanna* bore the International Maritime Organization identification number 9460277 and was registered in The Marshall Islands. The ship transported cargo on ocean voyages, including to and from the Port of New Orleans, Louisiana. The ship arrived in the navigable waters of the United States on or about March 3, 2021. It then travelled approximately 100 miles up the Mississippi River to the Bonne Carré anchorage where the United States Coast Guard conducted a port state control inspection starting on March 11, 2021.

On large commercial vessels such as the *M/V Joanna*, machinery space bilge water is generated on a regular basis. Machinery space bilge water refers to water and other materials that drip and leak from machinery and mechanical systems and accumulates in the bilge, which is the bottom-most portion of the engine room. Machinery space bilge water is defined for purposes of U.S. law in 33 C.F.R. § 151.05 as “water which may be contaminated by oil resulting from things such as leakage or maintenance work in machinery spaces. Any liquid entering the bilge system including bilge wells, bilge piping, tank tops or bilge holding tanks is considered oily bilge water.”

Oily bilge water can be lawfully disposed of in two manners: (1) it may be processed through the onboard Oily Water Separator and Oil Content Monitor resulting in an overboard discharge of water with no more than 15 parts per million (“ppm”) of oil, or (2) it may be disposed

of to a barge or other shore-based disposal facility. The Oily Water Separator system utilized an Oil Content Monitor (also known as an Oil Content Meter) which measures the quantity of oil present as water is being processed through the system. When the Oil Content Monitor detects oil in concentrations greater than 15ppm from a sample of the overboard discharge, the Oily Water Separator system alarms and triggers a three-way valve to stop discharging overboard and to recirculate the water on board the vessel for further treatment.

Large vessels such as the *M/V Joanna* also generate sludge during the purification of the fuel. Sludge is a waste oil that may be disposed of by burning in an onboard incinerator or by "landing" it ashore where it can be properly disposed.

All disposals and transfers of machinery space bilge water must be accurately recorded in the vessel's Oil Record Book by the person or persons in charge of those operations. 33 C.F.R. § 151.25. Each completed page must be signed by the Master or other person having charge of the ship. The Oil Record Book must be kept on board for three years and made available for inspection. The U.S. Coast Guard regularly inspects Oil Record Books and is authorized to do so pursuant to the Act to Prevent Pollution from Ships.

On commercial vessels such as the *M/V Joanna*, fuel-oil passes through a fuel-oil heater before it is delivered to the main engine. These systems are outfitted with pressure-relief valves in order to prevent over pressurization of the fuel-oil heater and thereby prevent the possibility of an oil leak catching fire, or an explosion of the fuel-oil heater which could then result in damage to the vessel, its crew and the environment.

III. The Coast Guard Inspection

A. Violation of the Act to Prevent Pollution from Ships

On or about March 6, 2021, the *M/V Joanna* arrived in New Orleans, Louisiana. On March 11, 2021, members of the United States Coast Guard conducted a Port State Control inspection of the *M/V Joanna*. During the inspection, the Coast Guard discovered a modification to the Oil Content Monitor valve handle assembly.

The modified valve contained a trapezoidal-like metal insert that is tack welded to the valve handle assembly. As a result, the valve handle could not rotate its full cycle to the left. As designed, when turned to the left, a metal bar on the handle would make contact with a magnet that, in turn, allowed overboard discharges while preventing the ability to run fresh water through the Oil Content Monitor.

The design and placement of the metal insert found inside the Oil Content Monitor valve handle assembly by the Coast Guard defeated the design and ability of the Oil Content Monitor to evaluate an actual sample of what was being discharged overboard. Instead, the metal insert resulted in the dilution of the sample being measured by the Oil Content Monitor to determine whether it contained a concentration of oil in excess of 15 parts per million. There was no legitimate purpose for this unauthorized modification. Any alteration of this required pollution prevention equipment required approval from the Flag State and Classification Society. With the unauthorized metal insert welded in place, it was possible to discharge bilge water overboard while diluting a sample of the actual effluent going overboard. This method of “tricking” the Oil Content Monitor sensor means that the actual

oil content of discharges cannot be known. Regardless of the unknown concentration of oil discharged overboard, this method violated MARPOL because the discharges were not made through 15 ppm equipment and because the standard is 15 ppm "without dilution."

The Oil Content Monitor electronically recorded data of operation. After finding that the device had been modified, the Coast Guard seized the Oil Content Monitor including the data card on which past operations were recorded. Consistent with the use of the unauthorized modification of the Oil Content Monitor valve handle assembly, the playback of the recorded operation of the Oily Water Separator shows a flat line with no alarms during certain periods of time, including the voyage ending in New Orleans in March 2021. A government expert conducted a video recorded test of the *M/V Joanna's* Oil Content Monitor using different colors of water (clear for the source or sample tank and blue for fresh water). That test showed fresh water passing through the Oil Content Monitor when the valve handle was turned as far to the left as possible (given the metal insert).

The unauthorized modification on board the Joanna was discovered by a Coast Guard inspector who observed that the Oil Content Monitor valve handle did not turn as far to the left as designed. The protective cover over the valve handle and cover was sprayed with paint drops, except for a gap where the handle had blocked the spray from reaching the cover. The gap in the paint spray showed that the handle previously was able to turn further to the left. A Coast Guard advisory issued in 2008 and a notice from the Oil Content Monitor manufacturer called attention to the same method of tricking the Oil Content Monitor. The Coast Guard inspector was aware of these warnings and also observed what appeared to be a

metal insert through a gap in the cover plate. The Coast Guard required the crew of the *M/V Joanna* to remove the cover and found an unauthorized metal insert inside which allowed the sample to be diluted. This has been confirmed by a test performed by a government expert.

During the inspection of the *M/V Joanna* on the Mississippi River and in the Eastern District of Louisiana, the Coast Guard examined the ship's Oil Record Book. The entries made in the Oil Record Book relating to overboard discharges indicated that they had occurred through 15 ppm equipment (i.e., the Oily Water Separator and Oil Content Monitor). The Oil Record Book contained no entries indicating that discharges were made without the proper use of the Oil Content Monitor.

In pleading guilty to Count 1, Empire Bulkers and Joanna Maritime admit that, acting by and through their agents and employees, who were acting within the scope of their agency and employment and at least in part for the benefit of the defendants, they knowingly failed to maintain an accurate Oil Record Book in which all discharges had been fully and accurately recorded while the *M/V Joanna* was in U.S. waters. Specifically, between on or about September 25, 2020, and March 11, 2021, defendants, acting by and through their agents and employees, who were acting within the scope of their agency and employment and at least in part for the benefit of the defendants, knowingly and falsely recorded overboard discharges as having been made through a properly functioning Oily Water Separator and Oil Content Monitor when this was not true, and, knowingly failed to record exceptional discharges made without the use of a properly functioning Oily Water Separator and Oil Content Monitor.

Since on or about January 2021, all of the entries in the Oil Record Book of the *M/V Joanna* were written and signed by a senior supervisory engineer and co-signed by a subordinate engineer. The subordinate engineer that co-signed each entry did not actually participate in or observe the events described. Among the entries co-signed by this engineer were those falsely stating that overboard discharges took place through 15 ppm equipment. The subordinate engineer did not make these discharges or have direct knowledge of their accuracy. He co-signed the entries in the Oil Record Book at the direction of the senior supervisory engineer. The Master signed the bottom of every completed page when it was brought to him, but he had no independent knowledge of the operations described in the entries or their accuracy.

Since at least approximately February 19, 2021, and prior to the arrival of the *M/V Joanna* in the United States, the ship's incinerator was inoperable, and a necessary spare part had been ordered. The inoperability of the incinerator was known to the defendants and documented in ship records. The fact that the incinerator was not working when the ship was inspected in New Orleans was not disclosed to the U.S. Coast Guard.

B. Violation of the Ports & Waterways Safety Act

During the Coast Guard inspection on March 11, 2021, ship representatives sought permission from the Coast Guard to maneuver from the Bonne Carre Anchorage to a terminal further upriver where cargo operations were scheduled to take place. The Coast Guard inspectors granted the request and traveled with the ship.

Once the main engine was started and the vessel was underway, the inspectors noticed drops of oil on the deck plates. They followed the trail of oil that went past the purifier room. When they looked inside the purifier room, the Coast Guard inspectors observed oil leaking from a pressure relief valve on one of the two fuel oil heaters. Oil-soaked rags were packed around the valve, a rubber seal and hose clamp were affixed to the valve, and a make-shift drip-tray (a "gasket") had been hung on the fuel oil heater to direct the leaking oil into drip pans on the floor. Coast Guard also found that the common discharge line from the two pressure relief valves (including the one that was leaking) had been disconnected and crimped closed. This was done by inserting a crimped piece of pipe into the discharge line which prevented oil from leaking out. Disconnecting and crimping the discharge line closed disabled both pressure relief valves. The safety relief valves on the fuel oil heaters serve a critical safety function because they allow pressure to be released and oil diverted to a waste oil tank. When the leaking pressure relief valve was discovered by the Coast Guard inspectors, the leak rate had required a crew member to empty a five-gallon collection bucket approximately every thirteen minutes. Prior to observing the fuel oil leak and the bound and gagged pressure relief valves, the Coast Guard had not been informed of the unauthorized modification or of the fuel oil leak.

Empire's safety management system specifically prohibited binding and gagging the pressure relief valves. The plugging and crimping closed of the discharge line caused the fuel oil to back up and leak out of the broken pressure relief valve. The plugging of the relief valves and the large volume of oil leaking from the pressure relief valve presented hazardous

conditions. Had there been a fire or explosion in the purifier room, it could have been catastrophic and resulted in a loss of propulsion, loss of life, and pollution.

In pleading guilty to Count 4, Defendants admit that on or about March 11, 2021, acting by and through their agents and employees, who were acting within the scope of their agency and employment, and at least in part for the benefit of the defendants, they knowingly failed to immediately report to the Coast Guard a hazardous condition involving the disabling of the pressure relief valves on the fuel oil purifiers and the related oil leak in violation of the Ports and Waterways Safety Act.

Very truly yours,

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AUSA
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Defense Counsel



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FOR THE DEFENDANTS.

On behalf of the Defendant Empire Bulkers, Ltd. I have been authorized by a corporate resolution to sign this Plea Agreement and Empire Bulkers, Ltd. Empire Bulkers has been advised by its attorneys of its rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. Empire Bulkers voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to Empire Bulkers other than those contained in this Agreement. No one has threatened or forced Empire Bulkers in any way to enter into this Agreement. Empire Bulkers, Ltd. is satisfied by the representation of its attorneys in this matter.

VASILIOS KOUTSOLAKOS / DIRECTOR / MAY 23, 2022
NAME/TITLE/DATE


Signature

On behalf of the Joanna Maritime Limited, I been authorized by a corporate resolution to sign this Plea Agreement. Joanna Maritime been advised by its attorneys of its rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. Joanna Maritime voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to Joanna Maritime other than those contained in this Agreement. No one has threatened or forced Joanna Maritime in any way to enter into this Agreement.

NAME/TITLE/DATE

Signature

I am counsel for Empire Bulkers Ltd. and Joanna Maritime Limited. I have discussed every part of this Agreement with authorized representatives of Empire Bulkers and Joanna Maritime. I have advised both defendant corporations of their rights, of possible defenses, of the Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. To my knowledge, the decisions of Empire Bulkers and Joanna Maritime to enter into this Agreement are informed and voluntary.



George M. Chalos
Briton P. Sparkman
Counsel for Empire Bulkers Ltd.
Counsel for Joanna Maritime Limited